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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Eligibility for the ) GN Docket No. 94-90  
Specialized Mobile Radio )  
Services and Radio Services )  
in the 220-222 MHz Land )  
Mobile Band and Use of )  
Radio Dispatch )  
Communications )

To: The Commission

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JOINT COMMENTS  
OF THE  
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.  
AND  
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

The Industrial Telecommunications Association, Inc. ("ITA") and the Council of Independent Communication Suppliers ("CICS"),<sup>1</sup> pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submit these Comments responsive to the Commission's proposal.<sup>2</sup>

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<sup>1</sup> Hereinafter, ITA and CICS are sometimes referred to as "the Joint Commenters."

<sup>2</sup> Notice of Proposed Rule Making (FCC 94-202), GN Docket No. 94-90, adopted August 2, 1994, released August 11, 1994.

I. PRELIMINARY STATEMENT

1. ITA, formerly the Special Industrial Radio Service Association, Inc. (SIRSA), is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. ITA also coordinates channels from the 800 MHz General Category pool for those entities: (a) eligible to become Industrial/Land Transportation licensees; (b) wishing to expand trunked systems; or (c) consolidating conventional systems into a trunked system. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 8,600 private land mobile radio communications licensees and the following trade associations:

- Alliance of Motion Picture and Television Producers
- American Mining Congress
- Associated Builders & Contractors, Inc.
- Florida Citrus Processors Association
- Florida Fruit & Vegetable Association
- National Aggregates Association
- National Food Processors Association
- National Propane Gas Association
- National Ready-Mixed Concrete Association
- National Utility Contractors Association
- New England Fuel Institute
- United States Telephone Association

3. CICS is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the Private Land Mobile Radio Services. CICS is an independent market council of ITA.

## II. COMMENTS

4. Motivated by a desire to promote competition in all sectors of the mobile service marketplace, the Commission proposes to eliminate the existing rule prohibiting wireline common carriers from operating Specialized Mobile Radio (SMR) systems. The Commission also proposes to permit common carrier licenses to offer dispatch service to their customers.

5. ITA and CICS recognize that the recent amendments to the Communications Act and other developments in the telecommunications industry make it almost inevitable that the FCC will remove the prohibition on the entry of wireline common carriers into the SMR field. ITA/CICS remain concerned that SMR systems in general, and especially smaller SMRs, may lack the capital resources and economies of scale to compete effectively with wireline telephone

companies. For that reason, ITA/CICS are reluctant to endorse the Commission's proposal.

6. Nonetheless, the Joint Commenters recognize that one of the underlying objectives of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") was to promote regulatory parity. In view of the express provisions of the Budget Act and the Commission's actions in the broadband and narrowband PCS proceedings, the movement to eliminate the prohibition on wireline entry into the SMR business has gained considerable momentum. Accordingly, ITA and CICS reluctantly conclude that, while it may be desirable to continue the prohibition, there are compelling reasons for the Commission to amend Sections 90.603 and 90.703 in the manner proposed.

7. Moreover, as the Commission notes in its proposal, the prohibition on wireline common carriers affects a number of small, rural telephone companies that may have smaller capitalizations than some SMR licensees. That being the case, ITA/CICS are compelled to concede that the prohibition on wireline entry is an anomaly in the current environment. Nonetheless, ITA/CICS encourage the Commission to be vigilant in its efforts to protect against cross-subsidization by wireline carriers who enter the SMR business.

8. ITA and CICS reach a different conclusion with respect to the issue of common carriers providing dispatch communications. Traditionally, by both law and practice, dispatch service has been the exclusive preserve of private radio land mobile systems.<sup>3</sup> For the reasons detailed below, ITA and CICS do not believe it is in the public interest to remove the prohibition on the provision of dispatch communications by common carriers.

9. The 1993 Budget Act established a clear demarcation between Commercial Mobile Radio Services and Private Mobile Radio Services. For Part 90 systems licensed as SMRs, the Budget Act reduces the distinction to a question of whether the SMR systems are interconnected with the public, switched telephone network. SMR systems that offer interconnected service will be regulated as CMRS licensees and subjected to Title II regulation. SMR systems that are not interconnected with the public telephone network will be regulated as private systems.

10. As a result of the distinctions drawn in the Budget Act, SMR licensees will be forced to choose between offering interconnected service or restricting their operations to dispatch service exclusively. Those who choose to offer interconnected service will be regulated under the CMRS rules; those who offer

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<sup>3</sup> The Joint Commenters are aware, as the Commission notes in its proposal, that the Communications Amendments Act of 1982 grandfathered common carrier-provided dispatch services initiated before January 1, 1982.

dispatch service exclusively will be exempt from the CMRS provisions. In cases where there is only an incidental amount of interconnected traffic on an SMR system, the regulatory structure set forth in the Budget Act may present a difficult business decision for the SMR licensee.

11. Some SMR licensees will cease providing interconnected service rather than subject themselves to regulation as a CMRS provider. Therefore, although the Budget Act seeks to foster regulatory parity, it will also create an environment in which some SMR licensees will deliberately refrain from offering interconnected service. Accordingly, while the Budget Act arguably may achieve regulatory parity between different classes of CMRS licensees, it will also have the effect of limiting the level of service that SMR licensees regulated as non-CMRS systems may provide to their subscribers.

12. In an environment where non-CMRS SMR licensees are statutorily precluded from offering interconnected service, it seems both appropriate and reasonable to continue the prohibition on provision of dispatch service by common carriers. Even in an environment premised on regulatory parity, there are natural limits to the extent to which parity can be achieved. Just as non-CMRS SMR licensees will not be able to offer interconnected service, it seems fitting that common carriers should be precluded from offering dispatch service.

13. ITA and CICS believe that lifting the prohibition on dispatch service will have an anti-competitive effect. If the Commission does lift the prohibition, common carriers will be able to offer dispatch as well as interconnected service. Non-CMRS SMR systems, on the other hand, will be restricted to providing dispatch service. This would produce an inequitable situation that is inconsistent with the underlying premise of the Budget Act.

14. For other reasons, the Joint Commenters question the need for eliminating the dispatch prohibition. First, aside from the wireline companies, all common carriers are now able to establish SMR systems under existing rules. Some common carriers already operate SMR systems and others have applications pending to do so. If the Commission does decide to eliminate the prohibition on wireline entry, all common carriers will be eligible to establish SMR systems. To the extent that common carriers believe there is a need to offer dispatch service, they can do so by operating SMR systems.

15. Second, as the Commission discusses in its proposal, common carrier mobile systems are permitted to offer non-common carrier services on a secondary basis. Therefore, the prohibition on common carriers providing dispatch does not operate to preclude all dispatch service by cellular or other mobile common carrier licensees. Rather, the prohibition only precludes common carrier

licensees from offering dispatch service if doing so would interfere with the carrier's ability to offer common carrier service.

16. For the reasons stated above, ITA and CICS urge the Commission to preserve the existing rule structure governing the provision of dispatch service. This approach would allow non-CMRS SMR licensees to continue to focus their corporate energies on providing dispatch service without wholesale competition from common carriers. This arrangement would also ensure that, by one means or another, the needs of the public for dispatch service would be fulfilled.

### III. CONCLUSION

17. ITA and CICS agree that, in the current regulatory environment, there are compelling reasons for eliminating the prohibition on entry of wireline common carriers into the SMR field. Nonetheless, the Joint Commenters believe that such action may, in some instances, jeopardize the economic viability and competitiveness of SMR licensees in the land mobile industry. Should the Commission eliminate the prohibition, the Joint Commenters urge the Commission to remain vigilant against the

possibility that wireline common carriers might use, either intentionally or inadvertently, existing common carrier plant to cross-subsidize their SMR operations.

18. ITA and CICS urge the Commission to continue the existing prohibition against the offering of dispatch service by common carriers. The Joint Commenters believe that the current rule structure is adequate to meet the existing and future demands of the public for dispatch service. Common carriers who operate SMR systems already have the flexibility to offer dispatch service on a primary basis. Alternatively, mobile common carriers have the ability to offer dispatch service on a secondary basis using their common carrier systems. Together, these two alternatives provide a means by which common carriers may satisfy the bona fide dispatch needs of their customers under the existing rule structure.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers respectfully submit these Comments and urge the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS  
ASSOCIATION, INC.**

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